



Decision

Matter of: Good Food Service, Inc.

File: B-260728

Date: June 20, 1995

Phillip Mackin Bailley, J.D., for the protester.
Major Berrigan and Thomas Duffy, Department of the Army, for the agency.
Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest that solicitation included protester's proprietary information, thereby placing protester at a competitive disadvantage, is denied where there is no evidence the information was not publicly discloseable, and release of the information did not competitively harm the protester.

DECISION

Good Food Service, Inc. (GFS) protests the terms of request for proposals (RFP) No. DAHA90-95-R-0006, issued by the Department of the Army, for food services at the Army National Guard Readiness Center. GFS, the incumbent contractor, contends that it was placed at a competitive disadvantage by the issuance of amendment No. 1 to the solicitation which allegedly disclosed proprietary GFS data.

We deny the protest.

The agency issued the RFP on January 23, 1995, seeking proposals for a "profit-sharing" contract for a base year with 4 option years to provide food services at the Army National Guard Readiness Center. On February 8, the agency conducted a site visit to familiarize prospective offerors with the facility and available equipment. The site visit was attended by five contractors, including GFS. After the tour, the contracting officer conducted a question and answer session in which the prospective contractors requested to view the incumbent's monthly operations reports, pest control reports, equipment repair tickets, the employees' work schedule, and an inventory of smallware used in the current contract. The agency requested that GFS provide it with all of the requested information, except for

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the monthly reports, which were already in the agency's possession. On February 15, the agency then issued amendment No. 1, which contained the information provided by GFS, the GFS' monthly and weekly reports, and a transcript of the questions asked at the site visit, including answers by the agency.

On February 21, GFS filed a protest with the agency in which it alleged that amendment No. 1 improperly contained information that was proprietary to GFS. This protest was denied by the agency on February 27. The agency received proposals by the February 28 closing date and made award to All American Food Services, Inc., on March 8. This protest followed. As explained below, we deny the protest because a substantial portion of the information in amendment No. 1 is not proprietary to GFS and, taken as a whole, the information did not place GFS at a competitive disadvantage.

We have recognized the right of a firm to protect its proprietary data from improper exposure in a solicitation in the context of a bid protest. Ingersoll-Rand Co., B-236391, Dec. 5, 1989, 89-2 CPD ¶ 517. As a general rule, proprietary information is that which is marked proprietary or otherwise submitted in confidence to the government. See Zodiac of N. Am., Inc., B-220012, Nov. 25, 1985, 85-2 CPD ¶ 595.

Where a protester alleges that such information was improperly disclosed, the record must establish that the protester was competitively prejudiced by the release before we will sustain a protest. Management Servs., Inc., 55 Comp. Gen. 715 (1976), 76-1 CPD ¶ 74; Ursery Cos., Inc., B-258247, Dec. 29, 1994, 94-2 CPD ¶ 264. The possibility of competitive prejudice may not be established on the basis of speculation. JL Assocs., Inc., B-239790, Oct. 1, 1990, 90-2 CPD ¶ 261.

The agency takes the position that the pest control reports, the equipment repair tickets, the inventory of the smallware, and the employees' work schedule are not proprietary information, since this information is otherwise available to the public without restriction. GFS does not refute this contention, and we agree that these documents are not proprietary. See Ursery Cos., Inc., supra. This leaves the question of the release by the agency of GFS' weekly and monthly reports. The record shows, and the protester acknowledges, that these documents did not contain a restrictive legend or any other printed statement which would indicate that the reports were regarded by GFS as proprietary or confidential in nature. The information contained in the reports is essentially that which is necessary to establish the contract price under the profit-sharing arrangement present here, which becomes

publically accessible information, the disclosure of which is ordinarily a cost of doing business with the government. JL Assocs., Inc., supra. While GFS suggests that the agency released this information to embarrass the protester, GFS makes no specific representation of competitive harm, asserting only that it "is not possible to tell from the present time what the future will bring," and there is no evidence of competitive harm in the record.

The protest is denied.

\s\ Michael R. Golden
for Robert P. Murphy
General Counsel

¹We note that attachment No. 4 to the RFP contained a statement of the estimated operating income for the food service operations of the Readiness Center from 1992 to 1996, which contained certain information that is also included in GFS' monthly and weekly reports, such as the cost of food and gross profit. However, GFS did not object to this information being included in the original RFP.